

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
ANDRE FULLER,

Plaintiff,

-against-

WARDEN SHAW of G.R.V.C. in his official capacity,  
T.S.O./G.R.V.C./E.R.U., or JOHN DOE, or JOHN DOE in  
his official capacity

Defendants.

**ANSWER TO AMENDED  
COMPLAINT**

Jury Trial Demanded

07 CV 5817 (LAK) (RLE)

----- X  
Defendant WARDEN SHAW, for his answer to the amended complaint,  
respectfully alleges, upon information and belief, as follows:<sup>1</sup>

1. Denies the allegations set forth in paragraph "I" of the prisoner form amended complaint including all subparagraphs, except admits that plaintiff purports to name the parties to the action therein.

2. Denies the allegations set forth in paragraph "II" the Statement of Claim Section of the prisoner form amended complaint, including all subparagraphs, except admits that on December 11, 12, 13, 2006 plaintiff was incarcerated on Rikers Island.<sup>2</sup>

3. Denies the allegations set forth in paragraph "II.D" of the Statement of Facts Section, designated by plaintiff as "Phase I: Placement in Gang Unit," annexed to the

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<sup>1</sup> A check of the docket sheet indicates that the defendant identified as "T.S.O./G.R.V.C./E.R.U" has not been served with a copy of the amended summons and complaint nor has it requested representation from this Office. Upon information and belief the defendant identified as "T.S.O./G.R.V.C./E.R.U" is not a suable entity, and accordingly, should be dismissed from this action.

<sup>2</sup> Plaintiff has attached a one page handwritten statement to paragraph II, subparagraph D. For purposes of clarity, defendant responds to the allegations contained in this handwritten statement in paragraphs 3 through 6 below.

prisoner form amended complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning plaintiff's movement and housing.

4. Denies the allegations set forth in paragraph "II.D" of the Statement of Facts Section, designated by plaintiff as "Phase IV: Conditions of Confinement," annexed to the prisoner form amended complaint.

5. Denies the allegations set forth in paragraph "II.D" of the Statement of Facts Section, designated by plaintiff as "Phase III: Treatment by Correctional Officers in Unit and Conditions of Confinement," annexed to the prisoner form amended complaint.

6. Denies the allegations set forth in paragraph "II.D" of the Statement of Facts Section, designated by plaintiff as "Phase II: Failure to Protect," annexed to the prisoner form amended complaint.

7. Denies the allegations set forth in Paragraph "III" of the prisoner form amended complaint, except admits that plaintiff purports to have sustained the injuries as stated herein.

8. Denies the allegations set forth in Paragraph "IV" of the prisoner form amended complaint including all subparagraphs, except admits that there is a grievance procedure at Rikers Island and respectfully refers the Court to plaintiff's purported attachments for a true and accurate statement of their contents.

9. Denies the allegations set forth in Paragraph "V" the prisoner form amended complaint, designated by plaintiff as "Relief Sought," which is annexed to the prisoner form amended complaint, except admits that plaintiff purports to proceed and seek relief as stated therein.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph "VI" of the prisoner form amended complaint including all subparagraphs.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE:**

11. The amended complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE:**

12. Defendant Shaw has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE:**

8. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct and/or the intervening conduct of others or third parties, and was not the proximate result of any act of defendant Shaw.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:**

9. Plaintiff has failed to comply, in whole or in part, with conditions precedent to suit.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:**

10. Plaintiff provoked any incident.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:**

11. Plaintiff has failed to exhaust his administrative remedies as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997(e)(a).

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:**

12. Plaintiff's claim for money damages may be barred by the Prison Litigation Reform Act, 42 U.S.C. § 1997(e)(e).

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:**

13. Defendant Shaw has not violated any clearly established Constitutional or statutory right of which a reasonable person would have known and therefore is protected by qualified immunity.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE:**

14. The actions by any correction officers involved were justified by probable cause and/or reasonable suspicion.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE:**

15. Defendant Shaw had no personal involvement in the allegations alleged in the complaint.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE:**

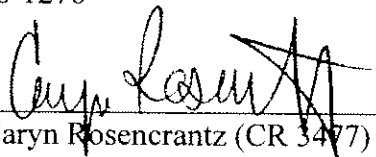
16. Plaintiff's claims may be barred in part by the applicable period of limitations.

**WHEREFORE**, defendant Warden Shaw requests judgment dismissing the prisoner form amended complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
March 14, 2008

MICHAEL A. CARDOZO  
Corporation Counsel of the City of New York  
Attorney for Defendant Warden Shaw  
100 Church Street, Rm. 3-219  
New York, New York 10007  
(212) 788-1276

By:

  
Caryn Rosencrantz (CR 3477)  
Assistant Corporation Counsel  
Special Federal Litigation

To: Andre Fuller (#07-A-3236)  
*Pro Se* Plaintiff  
Fishkill Correctional Facility  
Box 1245  
Beacon, New York 12508  
(By First Class Mail)

07 CV 5817 (LAK) (RLE)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ANDRE FULLER,

Plaintiff,

-against-

WARDEN SHAW of G.R.V.C. in his official  
capacity, T.S.O./G.R.V.C./E.R.U., or JOHN DOE,  
or JOHN DOE in his official capacity

Defendants.

**ANSWER TO AMENDED COMPLAINT**

**MICHAEL A. CARDOZO**

*Corporation Counsel of the City of New York  
Attorney for Defendant Warden Shaw  
100 Church Street  
New York, N.Y. 10007*

*Of Counsel: Caryn Rosencrantz  
Tel: (212) 442-8600  
NYCLIS No. 2007-040391*

*Due and timely service is hereby admitted.*

*New York, N.Y. ...., 200.....*

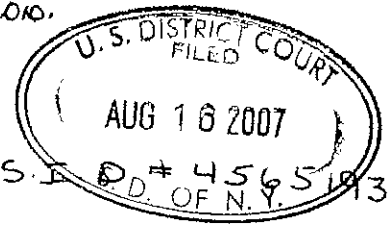
*..... Esq.*

*Attorney for .....*

PRO SE OFFICE <sup>DO.</sup>

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ANDRE FULLER #2410516412 NY.S.D. #456519132  
NEW # 07A3236



(In the space above enter the full name(s) of the plaintiff(s).)

v.

AMENDED  
COMPLAINT

under the  
Civil Rights Act, 42 U.S.C. § 1983

WARDEN SHAW G.R.V.C  
OFFICIAL CAPACITY  
E.R.U.T.S.O / G.R.V.C / DEC 11, 12 + 13, 2006  
or JOHN DOE INDIVIDUAL CAPACITY  
JOHN DOE

07 Civ. 5817 <sup>DAB</sup> (KMW)  
Jury Trial: Yes ☐ No ☒  
(check one)

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. No addresses should be included here.)

I. Parties in this complaint:

- A. List your name, identification number, and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff Name ANDRE FULLER  
ID # 2410516412 / 07A3236  
Current Institution DOWNSTATE CORP FACILITY  
Address BOX F  
RED SCHOOL HOUSE ROAD  
FISHKILL NY 12524-0445

- B. List all defendants' names, positions, places of employment, and the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the

above caption. Attach additional sheets of paper as necessary.

Defendant No. 1 Name SHAW (WARDEN) Shield # \_\_\_\_\_  
Where Currently Employed G.R.V.C  
Address 09-09 HAZEN ST. E. ELMHURST N.Y. 11377

Defendant No. 2 Name A.M.K.C (C-95) Shield # \_\_\_\_\_  
Where Currently Employed A.M.K.C  
Address 18-18 HAZEN ST E. ELMHURST N.Y. 11377

Defendant No. 3 Name E.S.U Shield # \_\_\_\_\_  
Where Currently Employed RIKER'S ISLAND  
Address \_\_\_\_\_

Defendant No. 4 Name \_\_\_\_\_ Shield # \_\_\_\_\_  
Where Currently Employed \_\_\_\_\_  
Address \_\_\_\_\_

Defendant No. 5 Name \_\_\_\_\_ Shield # \_\_\_\_\_  
Where Currently Employed \_\_\_\_\_  
Address \_\_\_\_\_

## II. Statement of Claim:

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A. In what institution did the events giving rise to your claim(s) occur? G.R.V.C  
09-09 HAZEN ST E. ELMHURST N.Y. 11370

B. Where in the institution did the events giving rise to your claim(s) occur? G.R.V.C  
13, BLOCK ANNEX B-SIDE 09-09 HAZEN ST E.  
ELMHURST N.Y. 11370

C. What date and approximate time did the events giving rise to your claim(s) occur? DECEMBER  
11, 12 + 13 Approx 6:30



D. Facts: \_\_\_\_\_

What happened to you?

PLEASE SEE STATEMENT OF  
FACTS ATTACHED

Who did what?

Was anyone else involved?

Who else saw what happened?

**III. Injuries:**

If you sustained injuries related to the events alleged above, describe them and state what medical treatment, if any, you required and received. MENTAL STRESS, PHYSICAL STRESS, FEAR FOR LIFE, EMOTIONAL DISTRESS, EXTREME AND OUTRAGEOUS CONDUCT + INTENT TO CAUSE SEVERAL EMOTIONAL DISTRESS, CAUSAL CONNECTION BETWEEN CONDUCT AND INJURY + SEVERAL SLASH BACKS, + SEVERE EMOTIONAL DISTRESS, INJURY TO HERNIATED DISC

**IV. Exhaustion of Administrative Remedies:**

The Prison Litigation Reform Act of 1995, 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." Administrative remedies are also known as grievance procedures.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

Yes ☒ No ☐

If YES, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s). G.R.V.C (THE BEACON) 09-09  
HAZEN ST. E. ELMHURST N.Y. 11370

B. Does the jail, prison or other correctional facility where your claim(s) arose have a grievance procedure?

Yes ☒ No ☐ Do Not Know ☐

C. Does the grievance procedure at the jail, prison or other correctional facility where your claim(s) arose cover some or all of your claim(s)?

Yes ☐ No ☒ Do Not Know ☐

If YES, which claim(s)? \_\_\_\_\_

D. Does the grievance procedure at the jail, prison or other correctional facility where your claim(s) arose not cover some of your claim(s)?

Yes ☒ No ☐ Do Not Know ☐

If YES, which claim(s)? \_\_\_\_\_

E. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose?

Yes ☒ No ☐

If NO, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

Yes ☐ No ☐

F. If you did file a grievance, about the events described in this complaint, where did you file the grievance? G.R.V.C 09-09 HAZEN ST E. ELMHURST N.Y  
11370

1. Which claim(s) in this complaint did you grieve? BEING PLACED  
IN 13, BLOCK B-SIDE

2. What was the result, if any? SEE GRIEVANCE ATTACHED

3. What steps, if any, did you take to appeal that decision? Describe all efforts to appeal to the highest level of the grievance process. GRIEVANCE, DEPTS + CAPTS

G. If you did not file a grievance, did you inform any officials of your claim(s)?

Yes ☒ No ☐

1. If YES, whom did you inform and when did you inform them? CAPTS,  
DEPTS + WARDEN THE SAME DAY

2. If NO, why not?

I. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

SPECIAL LITIGATION SECTION  
CIVIL RIGHTS DIVISION  
U.S. DEPARTMENT OF JUSTICE  
P.O. BOX 64400  
WASHINGTON DC 20035 - 6400  
EXHIBIT

Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.

**V. Relief:**

State what you want the court to do for you.

SEE RELIEF SOUGHT +  
ATTACHED

**VI. Previous lawsuits:**

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes ☐ No ☐

B. If your answer to A is YES, describe each lawsuit in questions 1 through 7 on the next page. (If

On  
these  
claims

there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same format.)

1. Parties to this previous lawsuit:

Plaintiff N/A

Defendants N/A

2. Court (if federal court, name the district; if state court, name the county) N/A

3. Docket or Index number N/A

4. Name of Judge assigned to your case N/A

5. Approximate date of filing lawsuit N/A

6. Is the case still pending? Yes ☐ No ☒

If NO, give the approximate date of disposition N/A

7. What was the result of the case? (for example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) N/A

On  
other  
claims

D. Have you filed other lawsuits in state or federal court otherwise relating to your imprisonment?  
Yes ☐ No ☒

E. If your answer to D is YES, describe each lawsuit in questions 1 through 7 on the next page. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same format.)

1. Parties to this previous lawsuit:

Plaintiff N/A

Defendants N/A

2. Court (if federal court, name the district; if state court, name the county) N/A

3. Docket or Index number N/A

4. Name of Judge assigned to your case N/A

5. Approximate date of filing lawsuit: N/A

6. Is the case still pending? Yes ☐ No ☒

If NO, give the approximate date of disposition N/A

7. What was the result of the case? (for example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) N/A

Signed this 5 day of July, 2007 I declare under penalty of perjury that the foregoing is true and correct.

Signature of Plaintiff Andrie Fuller  
Inmate Number 07A3236  
Mailing address DOWNSIDE CORR FACILITY  
BOX F  
RED SCHOOL HOUSE ROAD  
FISHKILL NY 12524

Note: All plaintiffs named in the caption of the complaint must date and sign the complaint and provide their inmate numbers and addresses.

I declare under penalty of perjury that on this 5 day of July, 2007 I will deliver this complaint to prison authorities to be mailed to the *Pro Se* Office of the United States District Court for the Southern District of New York.

Signature of Plaintiff: Andrie Fuller

Phase: I (Placement in gang Unit)

ON OR ABOUT DECEMBER 2005 OR The End of November of 2005, I Andre Fuller # 31D#4565193Z - ID# 2410516412 was transferred from V.C.B.C. (BRONX BOAT) TO G.R.V.C. RIKEI ISL. and placed in housing unit 8A for about 3 months after that my classification went down then I was transferred to 10B, from Housing unit 10B I went to 7A, from 7A, I was then transferred to housing unit 13B. After one week of being in 13B, I noticed that a lot of my rights were being violated because I was now placed in protective custody gang related (CRIP-House) and which there was no movement with regular population. Also other inmates I.D. cards (Gang Members) in 13B were stamped (S.R.) I then found out that I was being isolated from all normal activities and movement also on my court appearance dates. In intake I was now being placed in holding cell with all gang (CRIP MEMBERS) just to wait to be handcuffed to go to criminal court. While being in this cell I was now being called and labeled as a crip and that I never got caught anywhere that bodily harm would be done to me by other gang related members (Example: Bloods, Patria, D.D.A., Latin Kings) other gangs in 13B.

Phase: IV (Conditions of Confinement)

(My cell being tossed and damage to my personal property) Upon informing Grievance of this matter and higher staff (C.O's, Capt's, Deps.) etc. (see attached) (Response from the Comptroller's Office). I was told that I couldn't be moved to another house because I was labeled as a Crip gang member. Upon doing this other gang activities that arose in 13B such as picking on other inmates to beat up on, so they could be moved out so that other crip members could be transferred in their place. Also I could not even get to sick call or any of my call outs because the C.O's were not putting me down for sick call when I asked to go. And because the Crips would gang up and would start fights with other gang members in sick call (The Clinic). So all other inmates were neglected to go down to sick call because of this. Please be advised that there are numerous reports in D.O.C.S. Log books to support this matter at hand (Main Log books and Clinic Log Books).

Phase: III (Treatment by correctional officers in Unit) & (Conditions of Confinement)

In harms way while housing in 13B on December, 11, 12, 13, of 2006, the Crip member started Rioting on 13B, T.S.O., E.S.U.. This is logged in the books (Main and 13B Logs). In 2005 of November I was treated for a herniated disc which occurred after being struck and poked with sticks by (E.S.U.). I tried to seek medical attention but was denied as I mentioned in the medical phase. I was placed as a gang related member in my cell and locked down for 3 days (Dec. 11, 12, 13, of 2006) I did not receive a shower, recreation, law library and phone calls. I was also being feed in my cell with unsafe food (found spit and bugs in my food) And also could not receive any visits from my family. I was told this is what I get for being a gang related member. I was told this by C.O's and Captains. The riot that took place December 11, 12, 13 of 2006 there are over 20 people who received new charges concerning this matter (see intake log books (Main)) Being placed in 13B, for so long I felt that the whole G.R.V.C. is now a treath and now I feel that they are going to place me somewhere in G.R.V.C. that's the same as 13B - worse and treathning to my well being.

Phase: II (Failure to protect)

I had no protection from the officer on duty (B-Man) because ever time something happened in 13B the officer (B-Man) would run for cover to the bubble with the (A-Man) so I was dependent on my own to take care of myself.

## RELIEF SOUGHT

UNDER TORTS OF DAMAGES FOR THE SUM OF 10 million dollars to be AWARDED to MR. ANDRÉ FULLER, ALONG WITH COMPENSATORY DAMAGES + PUNITIVE DAMAGES OF MENTAL STRESS, PHYSICAL STRESS, EMOTIONAL STRESS, EMOTIONAL DISTRESS EXTREME AND OUTRAGEOUS CONDUCT + INTENT TO CAUSE SEVERAL EMOTIONAL DISTRESS, I ALSO REQUEST COMPENSATION FOR ABUSE OF AUTHORITY INCOMPETENCY, FAILURE AND OR NEGLECT IN THE PERFORMANCE OF DUTIES, ABUSE OF AUTHORITY, HARASSMENT, UTILIZING DISCIPLINARY MEASURE FOR RETALIATION AND REVENGE ASSAULT, MISCONDUCT, USING RACIAL AND BIASED REMARKS AS FAR AS BEING SEARCHED IN THE FUTURE. I WOULD LIKE TO REQUEST NOT TO BE PICKED ON DURING SEARCHES SUCH AS THROWING MY PERSONAL PROPERTY AROUND OR BEING MOVED FROM HOUSE TO HOUSE AND LAST BUT NOT LEAST FOR REINJURING MY HERNIATED DISC.



CITY OF NEW YORK - DEPARTMENT OF CORRECTION  
INMATE GRIEVANCE FORM 7101

Facility GRVC

Grievance No. X-007/07

Date 1/8/07

Name Fuller, Andre

No. 241-05-16412

Housing Unit 13B

Please describe problem as briefly as possible (Please print or type). Inmate states as a result of an Institutional Search on 1/7/07, his personal property was destroyed.

Action requested by inmate: To be awarded the sum of \$350.00 -

Advisor/Interpreter requested: Yes ☒ No Who Yes ☒ No  
Have you filed this grievance with any other agency or court? Yes ☒ No  
Or with the Inspector General's Office? Yes ☒ No

Grievant's Signature X

Grievance Aide \_\_\_\_\_

The IGRC proposes to informally resolve your grievance as follows: The igrc advises you of your right to file a claim with the NYC Comptroller's office for lost/damaged property.

Representative Signatures

This informal resolution is accepted:  
Grievant's Signature

If unresolved, you are entitled to a hearing by the Inmate Grievance Resolution Committee.  
I request a hearing of my grievance by the IGRC Yes ☒ No



P.S. NOTE TO DISTRICT COURT-  
ON JANUARY 19, OF 2007, EVERYBODY  
IN 13, BLOCK B-SIDE WAS MOVED TO  
17, BLOCK SEE LOG BOOK ON THIS DAY  
CONCERNING THIS MATTER AND PLEASE  
SEE G.O. LOG BOOK, INTAKE LOG BOOK, IN  
13, BLOCK LOG BOOK B-SIDE CONCERNING  
ALL OTHER MATTER.

THANK YOU

Mr. Andrie Fuller

## ON THE DETAINEE.

DETAINEE'S BEHAVIOR IN THE DEPARTMENT OF CORRECTIONS IS GOVERNED BY CORRECTIONS LAW 10B, MINIMUM STANDARDS FOR NEW YORK CITY CORRECTIONAL FACILITIES, AND TITLE 9 NYCRR SUB-TITLE AA, STATE COMMISSION OF CORRECTION PART 7000, ET AL.

(A) "EACH LOCAL CORRECTIONAL FACILITY SHALL PREPARE AND DISTRIBUTE TO ALL PRISONERS, UPON ADMISSION, A WRITTEN COPY OF FACILITY RULES AND INFORMATION. SUCH RULES AND INFORMATION SHALL INCLUDE, BUT IS NOT LIMITED TO THE FOLLOWING.

(1) FACILITY RULES OF CONDUCT, PENALTIES FOR VIOLATION, AND DISCIPLINARY PROCEDURES: (ALSO SEE CORRECTIONAL LAW 10B, SECTION 138, ET AL)

(7) LOCK-IN AND LOCK-OUT TIMES, WAKE-UP AND LIGHTS OUT TIMES.

(11) VISITATION RULES AND SCHEDULES

(15) GRIEVANCE PROCEDURES

(17) THE AVAILABILITY OF LEGAL REFERENCE MATERIALS AND SUPPLIES, INCLUDING A SPECIFIC REFERENCE TO THE AVAILABILITY OF RULES AND REGULATIONS OF THE STATE STATE COMMISSION OF CORRECTIONS."

RULES BOOKS ARE NOT GIVEN OUT UPON THE ADMISSION TO THE FACILITY, NOR ARE THEY POSTED. DETAINEES ARE MADE TO SIGN FOR RULE BOOKS BUT ARE NOT GIVEN ONE.

## CORPORAL PUNISHMENT

TITLE 9 NYCRR 7006 STATES THE FOLLOWING: "IN ORDER TO PROMOTE THE SAFETY, SECURITY, AND WELFARE OF ALL INMATES AND STAFF WITHIN LOCAL CORRECTIONAL FACILITIES, THE CHIEF ADMINISTRATIVE OFFICER OF EACH FACILITY SHALL ESTABLISH AND MAINTAIN A SYSTEM OF INMATE DISCIPLINE DESIGNED TO SET STANDARDS OF APPROPRIATE BEHAVIOR, ENCOURAGE SELF CONTROL AND PUNISH MISBEHAVIOR FAIRLY IMPARTIALLY AND CONSISTENTLY (SEE CORRECTION LAW 10B, SECTION 139, ET AL.) PART 7006.3 STATES THE FOLLOWING:

RULES OF INMATE CONDUCT.

A) THE CHIEF ADMINISTRATIVE OFFICER OF EACH

# REGULATIONS GOVERNING inmate behavior.

(C) EACH inmate shall be provided with a copy of the RULES of inmate conduct upon admission to the facility, and a copy shall ALSO be maintained in the facility LAW LIBRARY (SEE CORRECTION LAW 10B 139, et al). THIS IS NOT BEING DONE AT G.E.V.C AND OTHER FACILITIES. DETAINEES ARE BEING MADE TO SIGN FOR A RULE BOOK BUT ONE IS NEVER GIVEN TO THEM. SECTION 7006.4 MISBEHAVIOR REPORTS (A) STATES: WHEN A STAFF MEMBER HAS A REASONABLE BELIEF THAT AN INMATE HAS COMMITTED AN OFFENSE THAT CONSTITUTES A VIOLATION OF THE FACILITY RULES OF INMATE CONDUCT, AND SUCH VIOLATION IS NOT INFORMALLY RESOLVED, SUCH STAFF MEMBER SHALL PREPARE A WRITTEN MISBEHAVIOR;

(H) EACH MISBEHAVIOR REPORT SHALL INCLUDE,

- (1) the name(s) of the inmate(s) charged with the misconduct;
- (2) the date, time and place of occurrence;
- (3) a description of the incident or behavior involved AND the rule(s) allegedly violated;
- (4) the date and time the report is written;
- (5) the reporting staff member's printed name and signature.

THIS SECTION CLEARLY SPELLS OUT THAT CORPORAL PUNISHMENT IS NOT ALLOWED AND THAT PUNISHMENT IS BASED UPON AN INDIVIDUAL'S OWN ACTIONS. THUS, THIS DEPARTMENT MUST FORCE TO STOP THIS UNETHICAL PRACTICE OF CORPORAL PUNISHMENT.



THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER  
1 CENTRE STREET, NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.  
COMPTROLLER

00A-214

Date: 04/30/2007  
RE: Claim Status Letter  
Claim Number: 2007PD004937  
Occur Date: 01/07/2007

ANDRE FULLER 2410516412  
09-09 HAZEN ST  
E ELMHURST, NY 11370

Dear ANDRE FULLER 2410516412:

Your claim for damages is still under investigation. Please accept our apology for the delay, but a portion of the information required to complete our investigation must be obtained from other City agencies. At this time, we are awaiting receipt of reports from the agency or agencies involved in your claim.

Please be assured that every effort will be made to obtain these reports, and as soon as they are received, we will promptly notify you of our decision.

If your claim is not adjusted and you wish to pursue your claim against the City, you may bring a lawsuit against the City if it is started within one year and ninety days from the date of occurrence.

Very truly yours,

THOMAS ORAWIEC  
Bureau of Law and Adjustment

PROPERTY DAMAGE DIVISION  
(212) 669-8750

**RIOT (Inciting)****GRADE I: 121.12**

Inmates must not encourage or in any way persuade other inmates to take any action in order to take over any area of the facility, or to behave violently.

**SEX OFFENSES****GRADE I: 122.10**

**Non-Consensual Sexual Activity:** Inmates must not force or in any way coerce another person to engage in Sexual Activities. An attempt to force or otherwise coerce another person to engage in Sexual Activity is a **GRADE I OFFENSE**.

**GRADE II: 122.11**

**Consensual Sexual Activity:** Inmates must not voluntarily engage in Sexual Activity with others.

**GRADE III: 122.12**

**Soliciting Sexual Activity:** Inmates must not request, solicit or otherwise encourage others to engage in Sexual Activity.

**GRADE III: 122.13**

**Indecent Exposure:** Inmates must not expose the private parts of their bodies in a lewd manner.

**SMUGGLING**

Inmates by their own actions or acting in concert with others must not smuggle contraband into or out of the facility. The penalties for smuggling each type of contraband are listed below:

**GRADE I: 123.10**

**Weapons, Drugs, Alcohol or Escape Paraphernalia:** An attempt to smuggle any of these types of contraband is a **GRADE I OFFENSE**.

**GRADE III: 123.11**

**All other type of contraband.**

**STEALING**

Inmates must not steal other inmate's property or institutional property. The Grade of offense you can be charged with depends on the value of the property.

**GRADE I: 124.10**

**Stealing property with a value over \$75.**

**GRADE II: 124.11**

**Stealing property with a value between \$25.00 and \$75.00.**

**GRADE III: 124.12**

**Stealing property with a value under \$25.00.**

## **PURCHASE, SALE OR EXCHANGE OF SERVICES OR PROPERTY**

**GRADE III: 119.10**

Inmates must not sell, buy or exchange services or personal property with any other inmate without permission.

## **REFUSAL TO OBEY A DIRECT ORDER**

**GRADE II:**

Inmates must comply quickly and fully with any direct order from any staff member without argument.

Inmates must not refuse direct orders:

120.10

To stop fighting

120.11

To be frisked

120.12

To have a cell searched

120.13

To be locked-in/locked-out

120.14

To disperse an unauthorized assembly

120.15

To identify oneself

120.16

To go to court

120.17

To cooperate in admission procedures

120.18

When outside the facility

120.19

In an emergency situation

**GRADE III: 120.20**

In all other cases inmates who refuse direct orders will be charged with a **GRADE III OFFENSE**.

**GRADE III: 120.21**

**MALINGERING:** Failure to obey a direct order from any staff member quickly and fully is malingering.

## **RIOTING**

**GRADE I: 121.10**

Inmates must not take any action with intention of taking over any area of the facility. Inmates in groups must not behave violently or use threats of violence against any person or property.

## **RIOT CONSPIRACY**

## **TAMPERING WITH DOCUMENTS**

**GRADE II: 125.10**

Inmates must not destroy, tamper with, change, counterfeit, or give other inmates any institutional documents, passes or I.D. Cards.

**GRADE II: 125.11**

Forgery: Inmates must not forge staff or inmate signatures on any documents institutional or otherwise.

## **DESTRUCTION OF CITY PROPERTY**

**GRADE I: 126.10**

Inmates must not tamper with, or destroy, or sabotage any security related devices or equipment. An attempt to tamper with, destroy, or sabotage any security related devices or equipment is a **GRADE I OFFENSE**.

## **THREATS**

**GRADE I: 127.10**

Inmates must not make any threat, spoken, in writing or by gesture, against any staff member.

**GRADE II: 127.11**

Inmates must not make any threat, spoken, in writing or by gesture, against any person.

## **UNAUTHORIZED ASSEMBLY**

**GRADE I: 128.10**

Inmates must not gather in unauthorized groups anywhere in the facility. The size of the group is determined by local rule.

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**\$ 120.07**

**PEN:**

## Art. 30

aided by two or more other persons actually present, he is guilty of a serious physical injury to such person or to a third person.

Gang assault in the first degree is a class B felony  
(Added L.1996, c. 647, § 2.)

## Historical and Statutory Notes

**Effective Date.** Section effective Nov. 1, 1996, pursuant to L 1996, c. 647, § 3.

## Practice Commentary

by William C. Domingo

See Practice Commentary at the beginning of Article 12G.

120.08 Assault on a peace officer, police officer, fireman  
emergency medical services professional

A person is guilty of assault on a peace officer, police officer, fireman or emergency medical services professional when, intent to prevent a peace officer, police officer, a fireman, including a fireman acting as a paramedic or emergency medical technician, administering first aid in the course of performance of duty as a fireman, or an emergency medical service paramedic or emergency medical service technician, from performing a lawful duty, he causes serious physical injury to such peace officer, police officer, fireman, paramedic or technician.

Assault on a peace officer, police officer, fireman or emergency medical services professional is a class C felony.  
(Added L. 1996, c. 632, § 2.)

(Added L. 1996, c. 632, § 2.)

## Historical and Statutory Notes

Effective Date	Section effective Nov
1, 1976, pursuant to 11790 c. 752 § 1	

## Practice Consultancy

by William C. Domingo

See *Faithful Commentary* at the beginning of Article 120

## MULTI

Notes or Decisions

of officer's performance of  
generally 1

of officer's performance  
of duty, generally

120.10 Assault in the first degree

A person is guilty of assault in the first degree when

...with intent to cause serious physical injury to another person, he causes such injury to such person or to a third person.

2. With intent to disfigure another person severely and permanently, or to destroy any part of the body, or to destroy any organ of his body, he causes such injury to such person or child person, or

3. Under circumstances creating a departed relative's suffering in life, he recklessly engages in conduct which creates a risk of death to another person, and thereby, causes serious bodily injury to another person, or

4. In the course of and in furtherance of the commission or attempted commission of a felony or of immediate flight thereafter, or another participant if there be any, consens services 1. Injury to a person other than one of the participants

...in the first degree is a class B felony.

### Historical and Statutory Notes

	1970	1975	1980	1985	1990
Attendance	1,000	1,500	2,000	2,500	3,000
Chapman	1,000	1,500	2,000	2,500	3,000
First degree assault	1,000	1,500	2,000	2,500	3,000
Bilions from a billion	1,000	1,500	2,000	2,500	3,000

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## Practice Commentary

Dr. William C. Doherty

See Practice Commentary at the beginning of Article 120.

# **§ 1.20** Note 45

Sentencing a 14-year-old boy to a three-year conditional discharge, return for his agreement to plead guilty to sexual abuse was error, since actual abuse is not one of the designated felonies for which an exception to the defense of infancy applies, and the sentencing court upon recognizing the error would remedy it by modifying the sentence down to a one-year conditional discharge, notwithstanding the district attorney's contention that the court lacked jurisdiction and was required to remove the matter to family court. *People v. Murphy*, 82, 1998, 176 Misc.2d 483, 677 N.Y.S.2d 668.

Family Court juvenile delinquency adjudication and dispositional order upon admission in designated household petition, constituted premises prosecution principles so as to lay substantial criminal prosecution of same under the conduct in superior court. *People v. Holley*, 1997, 173 Misc.2d 857, 662 N.Y.S.2d 677.

Family Court did not have jurisdiction over Designated Felony Act petition charging 14-year-old juvenile with sex.

## **SHORT TITLE: APPLICATION** **Title A**

bery, where District Attorney had exercised his discretion not to proceed with criminal action against juvenile, and Criminal Court had not issued removal order. *Matter of Nick C.*, 1997, 172 Misc.2d 739, 659 N.Y.S.2d 969.

Legislature intended that, absent moral, juvenile offenses should be heard only in court where, upon finding of fault, criminal responsibility can attach. *Matter of Nick C.*, 1997, 172 Misc.2d 739, 659 N.Y.S.2d 969.

By criminalizing certain conduct committed by persons 13, 14, and 15 years of age, and by creation of defined and specific act of procedure, that person removal of actions to Family Court, 1997, 172 Misc.2d 739, 659 N.Y.S.2d 969.

Presentation of valid certified birth certificate is competent proof of age in context of determining jurisdiction over juvenile defendant. *People v. Abouma*, 1983, 170 Misc.2d 664, 666 N.Y.S.2d 197.

## **ARTICLE 2--PEACE OFFICERS**

Persons designated as peace officers  
15 Federal law enforcement officers, powers  
Powers of peace officers  
Training requirements for peace officers

### **Library References**

35 NY Jur 2d, Criminal Law § 1675

## **§ 2.10 Persons designated as peace officers**

Notwithstanding the provisions of any general special or local law or charter to the contrary, only the following persons shall have the powers of, and shall be peace officers:

1. Constables or police constables of a town or village, provided such designation is not inconsistent with local law.
2. The sheriff, undersheriff and deputy sheriffs of New York City.
3. The sheriff, undersheriff and deputy sheriffs of the Westchester county department of public safety services appointed after January thirty first nineteen hundred eighty-three to the title of public safety officer and who, pursuant to the functions previously performed by a Westchester county deputy sheriff, on or prior to such date.

3. Investigators of the office of the state commission of investigation.

4. Employees of the department of taxation and finance designated by the commissioner of taxation and finance as peace officers and assigned by the commissioner of taxation and finance. (a) [Eff. until Oct. 31, 2007, as amended by L. 1995, c. 2, § 70. See also, par. (a) below.] to the enforcement of any of the criminal or seizure and forfeiture provisions of the tax law relating to (i) taxes imposed under the tax law, or (ii) taxes imposed under article twelve A of the tax law and administered by the commissioner, (iii) taxes imposed under article twelve A of the tax law relating to the tax law and administered by the commissioner, (iv) taxes imposed under article twenty-eight or pursuant to the authority of article twenty-nine of the tax law and administered by the commissioner or

(a) [Eff. Oct. 31, 2007, as amended by L. 1995, c. 2, § 71. See, also, par. (a) above.] to the enforcement of any of the criminal or

## § 2.10

## SHORT TITLE: APPLICATION

Title A

## PEACE OFFICERS

Art. 2

tions, simplified parks informations and simplified environmental conservation informations, within the respective counties of Ontario, and Cayuga.

12. Special policemen designated by the commissioner and the directors of in-patient facilities in the office of mental health pursuant to section 7.25 of the mental hygiene law, and special policemen designated by the commissioner and the directors of facilities under his jurisdiction in the office of mental retardation and developmental disabilities pursuant to section 13.25 of the mental hygiene law, provided, however, that nothing in this subdivision shall be deemed to authorize such officers to carry, possess, repair or dispose of a firearm unless the appropriate license therefor has been issued pursuant to section 400.00 of the penal law.

13. Persons designated as special policemen by the director of a hospital in the department of health pursuant to section four hundred fifty-five of the public health law, provided, however, that nothing in this subdivision shall be deemed to authorize such officer to carry, possess, repair or dispose of a firearm unless the appropriate license therefor has been issued pursuant to section 400.00 of the penal law.

[14. Repealed.]

15. Uniformed enforcement forces of the New York state thruway authority, when acting pursuant to subdivision two of section three hundred sixty-one of the public authorities law, provided, however, that nothing in this subdivision shall be deemed to authorize such officer to carry, possess, repair or dispose of a firearm unless the appropriate license therefor has been issued pursuant to section 400.00 of the penal law.

16. Employees of the department of health designated pursuant to section thirty-three hundred eighty-five of the public health law, provided, however, that nothing in this subdivision shall be deemed to authorize such officer to carry, possess, repair or dispose of a firearm unless the appropriate license therefor has been issued pursuant to section 400.00 of the penal law.

17. Uniformed housing guards of the Buffalo municipal housing authority.

18. Bay constable of the city of Rye, the villages of Manaratoneck, South Nyack and bay constables of the towns of East Hampton, Hempstead, Oyster Bay, Riverhead, Southampton, Southold, Islip, Shelter Island, Brookhaven, Babylon, Smithtown, Huntington and North Hempstead, provided, however, that nothing in this subdivision shall be deemed to authorize the bay constables in the city of Rye, the village of South Nyack or the towns of Brookhaven, Baby-

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Art. 2

Southold, East Hampton, Riverhead, Islip, prior to April third, in the office of the town of Islip who prior to April third, in the office of the town of Islip, shall be deemed to be authorized to carry, possess, repair or dispose of a firearm unless the appropriate license therefor has been issued pursuant to section 400.00 of the penal law.

19. Harbor masters appointed by a county, city, town or village, provided, however, that nothing in this subdivision shall be deemed to authorize such officers, sergeants and lieutenants to carry, possess, repair or dispose of a firearm unless the appropriate license therefor has been issued pursuant to section 400.00 of the penal law.

20. Bridge and tunnel officers, sergeants and lieutenants, provided, however, that nothing in this subdivision shall be deemed to authorize such officers to carry, possess, repair or dispose of a firearm unless the appropriate license therefor has been issued pursuant to section 400.00 of the penal law.

21. a. Uniformed court officers of the unified court system pursuant to section 400.00 of the penal law.

b. Court clerks of the unified court system in the first and second departments.

c. Marshals, deputy marshals, clerk or under clerk of the district court.

d. Marshals or deputy marshals of a city, town or village, provided, however, that nothing in this subdivision shall be deemed to authorize such officer to carry, possess, repair or dispose of a firearm unless the appropriate license therefor has been issued pursuant to section 400.00 of the penal law.

e. Uniformed court officers of the city of Mount Vernon.

f. Uniformed court officers of the city of Mount Vernon.

22. Patrolmen appointed by the Lake George park commission, provided, however, that nothing in this subdivision shall be deemed to authorize such officer to carry, possess, repair or dispose of a firearm unless the appropriate license therefor has been issued pursuant to section 400.00 of the penal law.

23. Parole officers or warrant officers in the division of parole, provided, however, that nothing in this subdivision shall be deemed to authorize such employee to carry, possess, repair or dispose of a firearm unless the appropriate license therefor has been issued pursuant to section 400.00 of the penal law.

24. Probation officers.

25. Officials, as designated by the commissioner of the department of correctional services pursuant to rules of the department, and correction officers of any state correctional facility or penal correctional institution.

26. Peace officers designated pursuant to the provisions of the New York state defense emergency act, as set forth in chapter 51.

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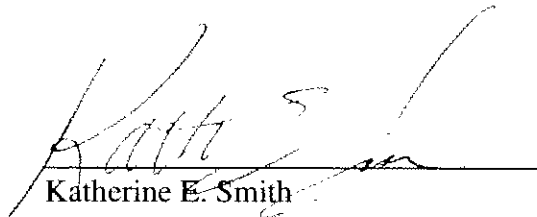


**DECLARATION OF SERVICE**

**KATHERINE E. SMITH** declares, under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the following is true and correct: On March 14, 2008, I caused to be served the annexed **ANSWER TO AMENDED COMPLAINT** upon the following *pro se* plaintiff herein, by depositing a copy of same, enclosed in a first class, postpaid properly addressed wrapper in a post office/official depository located at 100 Church Street, in the Borough of Manhattan, City of New York, directed to *pro se* plaintiff at the address set forth below, being plaintiff's home address:

Andre Fuller (#07-A-3236)  
Fishkill Correctional Facility  
Box 1245  
Beacon, New York 12508

Dated: New York, New York  
March 14, 2008

  
Katherine E. Smith